



UNITED STATES MARINE CORPS

MARINE CORPS BASE
PSC Box 20004
Camp Lejeune, North Carolina 28542-0004

BO 12750.3B

MCCS

1 SEP 2000

BASE ORDER 12750.3B

From: Commanding General
To: Distribution List

Subj: DISCIPLINE AND CONDUCT FOR NONAPPROPRIATED FUND EMPLOYEES

Ref: (a) SECNAVINST 5300.22C
(b) MCO 12000.11
(c) Negotiated Agreement between MCB (NAF Unit) and AFGE,
Local 2065
(d) BO 12771.2A

Encl: (1) Guidance in Effecting Disciplinary Actions
(2) Guidelines for Selecting Appropriate Penalty in
Disciplinary Actions
(3) Guide for Disciplinary Action
(4) Format of Investigation

1. Purpose. To provide instructions and guidance per references (a) through (d) concerning discipline and conduct as they apply to Nonappropriated Fund Instrumentality (NAFI) employees.

2. Cancellation. BO 12750.3A.

3. Summary of Revision. This Order has been completely revised and should be reviewed in its entirety.

4. Applicability. This Order is applicable to all Regular Full-time and Regular Part-time, nonprobationary, NAFI employees in the Marine Corps Community Services (MCCS) Department and Bachelor Housing Division. In instances involving Bargaining Unit employees where this Order conflicts with the Negotiated Agreement, the Negotiated Agreement will take precedence.

5. Policy. It is the policy of this Command that disciplinary actions be administered in a constructive, progressive, and timely manner for the purpose of maintaining discipline and morale among employees and for correcting offending employees. Disciplinary action will be taken only for such cause that will promote the efficiency of the Nonappropriated Fund Instrumentalities. When

formal action is necessary, the remedy imposed for disciplinary purposes should be the minimum necessary to correct the employee's behavior and maintain general discipline and morale in the work force. These remedies should be consistent with enclosures (1) through (3). Deviation from the application of remedies listed in enclosures (1) through (3) requires supportable justification.

6. Definitions

- a. Days. Calendar days.
- b. Grade Level. A level of classification for Crafts and Trades positions.
- c. NF Level. A level of classification for Nonappropriated Fund (NF) pay band positions.
- d. NAFI. Nonappropriated Fund Instrumentality.

7. Disciplinary Action. A disciplinary action is a personnel action involving a regular nonprobationary employee that advises the employee that the behavior being demonstrated is not at an acceptable standard. Disciplinary actions may reduce the employee's basic pay, reduce the employee's level/grade, place the employee in a nonpay, nonduty status, or separate the employee from NAFI employment. Disciplinary actions are effected for cause (i.e., the disciplinary action stemmed directly from the actions, conduct, or performance of the employee). Disciplinary actions include:

- a. Letter of Reprimand.
- b. Suspensions.
- c. Involuntary terminations or removals for cause.
- d. Involuntary demotions to a position in a lower NF or grade level.
- e. Reductions in pay based on conduct or performance.

8. Exclusions. The following actions are excluded from coverage of this Order:

- a. Business Based Actions.

1 SEP 2000

b. Actions taken as the result of termination of temporary promotion.

c. Separations or changes to lower pay or pay level when voluntarily initiated by the employee.

d. Application of a revised prevailing rate schedule when there is no change to the position.

e. Actions taken as a result of an employee abandoning the position to which assigned.

f. Separations of flexible employees or probationary regular employees.

g. Terminations for disability extending beyond sick leave allowance.

9. Responsibilities

a. NAFI Heads. Each NAFI head is responsible for ensuring that discipline is administered in a consistent and equitable manner and in the best interests of the NAFI and the employees in order that the efficiency of the NAFI and the morale of the employees be maintained at a high level.

b. Supervisors/Managers. Immediate supervisors/managers are responsible for maintaining discipline and morale among employees supervised and for initiating appropriate corrective action when warranted. In initiating corrective disciplinary action, supervisors/managers will be guided by enclosures (1) and (2). To ensure that supervisors exercise maximum responsibility over subordinates, employees will generally receive instructions or discipline from or through their immediate supervisors. This does not preclude disciplinary action being initiated by higher levels of supervision. When this is done, the higher level supervisor should consult with, and to the extent practicable, work through the immediate supervisor. When a supervisor observes an infraction of rules and the immediate supervisor of the employee(s) concerned is not available, this supervisor may take such steps on the spot as appears warranted. Thereafter, this supervisor will locate the immediate supervisor concerned, fully explain the circumstances, and place further responsibility for action in the hands of the immediate supervisor. When military personnel serve as immediate supervisors of civilians, they will exercise the same responsibilities as are exercised by civilian supervisors.

1 SEP 2000

c. MCCS Human Resources Director. The MCCS Human Resources Director, through the Employee Relations and Development Staff, is responsible for the following:

(1) Assisting supervisors and management officials at all levels in disciplinary matters.

(2) Providing technical review of investigations prior to discussion with employees.

(3) Drafting disciplinary actions to ensure consistency and conformance to prescribed regulations and procedures.

(4) Upon request, advising employees against whom disciplinary actions are taken concerning grievance/appeal rights.

(5) Monitoring disciplinary procedures and recommending changes as appropriate.

(6) Maintaining records required by paragraph 12.

10. Delegation of Authority. Authority to suspend from duty, demote, or terminate employees is hereby delegated to NAFI division directors. Authority to orally admonish and issue letters of admonishment, letters of requirement, letters of reprimand, and letters of proposed disciplinary action shall be delegated in writing by division heads to subordinate supervisors. The authority to take disciplinary action may be exercised by an official "acting" in the absence of the official to whom the respective authority has been delegated, but it may not be exercised "By direction."

11. Investigation

a. Prior to initiating any disciplinary action, management must ascertain whether there is sufficient evidence to justify the contemplated action. A prima facie case that can withstand all of the following tests must exist: (1) the action can be demonstrated to be for such cause as will promote the efficiency of the NAFI, (2) the evidence has been thoroughly documented, and (3) the action can be supported by testimony or documents in a grievance or an appeal.

b. An investigation may be conducted by the employee's immediate supervisor or by any official so authorized. In cases where someone other than the immediate supervisor is designated to conduct the investigation, that person will be advised to whom they are to make the report. The investigation may include documented

1 SEP 2000

interviews of witnesses; acquisition and examination of pertinent evidence, documents and reports; visual inspection of the work or incident site (if relevant); and, documentation of any unusual condition or special circumstances which otherwise might not be brought to light until a grievance/appeal hearing.

c. The investigating official shall prepare an investigation as outlined in enclosure (4). All information will be recorded specifically and in detail, i.e., dates, times, specific instances, and other data necessary to understand the charge.

d. The investigating official shall forward the investigation to the Supervisory Employee Relations and Development Specialist, MCCS Human Resources Division, for technical review.

e. The guidance contained in enclosure (2) may be beneficial in determining the appropriate remedy or recommendation.

f. If an investigation as outlined in enclosure (4) is not conducted, a detailed description of the incident of misconduct, citing any rules and regulations violated, with statements of witnesses, if any, must be submitted in narrative form to the MCCS Human Resources Division. If the information contained in the narrative is not considered sufficient, it will be returned to its originator for additional information.

12. Procedures for Processing Disciplinary Actions. These disciplinary action procedures are applicable only to regular, nonprobationary, nonbargaining unit employees. Refer to reference (c) for procedures for effecting disciplinary actions for bargaining unit employees.

a. For letters of reprimand and suspensions of 30 calendar days or less, the employee will be given a written notice which specifies the reasons for the action and advises the employee of the right to grieve the action.

b. For demotions, terminations, and suspensions of more than 30 calendar days:

(1) Advance Notice. The employee shall be given a 14-calendar day advance written notice of the proposed action.

(a) The notice must specify the reasons for the proposed action.

1 SEP 2000

(b) The notice must advise the employee of the right to reply, orally or in writing, to the proposed action within seven calendar days of the proposal. The reply must be made to the official who is to decide the action or that official's designee.

(c) The notice will specify how or where the employee may review the evidence relied upon to support the reasons for the proposed action.

(d) The notice will specify that the employee is entitled to be represented by a person of the employee's own choice, subject to the willingness of the chosen person to serve; the priority needs of the NAFI; and, providing there is no conflict of interest or position. Any fees charged by the employee's representative are the responsibility of the employee.

(e) The notice will specify that the employee and representative will be free from restraint, coercion, discrimination, or reprisal.

(2) Emergency Suspension. An employee may be placed on emergency suspension without pay, pending disciplinary action, when retention of the employee might result in damage to or loss of property and funds, be injurious to the employee or others, be detrimental to the interests of the NAFI, or when there are justifiable reasons to believe that the employee is guilty of a crime for which a prison sentence may be imposed. The employee will be provided at least 24 hours advance notice, in a pay status, of the emergency suspension. If the final disciplinary action taken against an employee so suspended is less than removal, the employee will be paid for the time suspended, less any loss of pay required by the disciplinary action. An emergency suspension without pay which extends for 30 calendar days or less may be grieved; one which extends for more than 30 calendar days may be appealed.

(3) Written Decision. A written decision will be delivered to the employee in advance of the effective date of the action.

(a) The decision will identify which reasons were sustained and which were not sustained and explain the rationale for the decision.

(b) The decision will specify the employee's right to appeal through the Disciplinary Action Appeals Procedure and how the

appeal is to be filed, the time limits for submission of such appeal, and the right to request a hearing.

(c) A written decision may not increase the penalty proposed in the advance notice.

(d) The standard of proof to be applied in deciding disciplinary actions shall be substantial evidence.

c. An official record will be established by the MCCA Human Resources Director for each disciplinary action effected. This official record will be maintained for at least two years from the date the action was effected. The record will consist of:

(1) The appellant's petition of appeal.

(2) A copy of the notice of proposed disciplinary action.

(3) A copy of the appellant's written response, if any, to the notice of proposed action.

(4) A summary of the appellant's oral response, if any, to the notice of proposed action.

(5) A copy of the written decision of disciplinary action.

(6) A copy of the document (MCCA 500, (Rev 2/99)) effecting the action.

(7) Any and all evidence relied upon in support of the action.

13. Probationary and Flexible Employees

a. Termination of probationary employees will be effected in writing and will state the reason for the termination. Termination during probation is not subject to the grievance procedure.

b. Flexible employees, except in unforeseeable circumstances or disciplinary reasons, will be given at least five days notice of termination. Termination of a flexible employee is not subject to the grievance procedure but may be reviewed by the division director, or designee, if requested in writing by the employee within 10 days of the effective date of termination.

1 SEP 2000

14. General Prohibitions and Problems

a. Use of NAFI Property, Facilities and Manpower. An employee is prohibited, directly or indirectly, from using or allowing the use of NAFI property of any kind, including property leased to a NAFI, for other than officially approved activities. An employee has an inherent duty to protect and conserve NAFI property, including equipment, supplies, and other property entrusted or issued to the employee.

b. Misuse of Information. An employee is prohibited from directly or indirectly using or allowing the use of official information, obtained through or in connection with the employee's NAFI employment, which has not been made available to the general public, for the purpose of furthering a private interest.

c. Contributions or Gifts to Superiors. An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position; an employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than the superior official; and, an employee shall not make a donation as a gift to an employee in a higher position. This does not, however, prohibit a voluntary gift of nominal value or a donation in a nominal amount, when made on a special occasion such as marriage, illness, baby shower, birthday, or retirement.

d. Outside Employment

(1) Incompatible Activities. An employee is prohibited from engaging in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of NAFI employment. Outside employment which tends to impair the employee's mental or physical capacity to perform the employee's NAFI duties and responsibilities in an acceptable manner is forbidden. Other incompatible activities include, but are not limited to, acceptance of a favor, pay, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in or create the appearance of conflicts of interest.

(2) Additional Compensation for Services. An employee is prohibited from receiving any salary or anything of monetary value from a private source as pay for the employee's services in connection with the discharge of the employee's NAFI duties.

(3) Teaching, Lecturing and Writing. Employees are encouraged to engage in teaching, lecturing, and writing that is not incompatible with the conduct of their NAFI employment.

e. Conduct Prejudicial to the NAFI. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful, or other conduct prejudicial to the NAFI. Employees shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding NAFI efficiency or economy, losing complete independence or impartiality, making a decision outside official channels, or affecting adversely the confidence of the public in the integrity of the NAFI.

f. Indebtedness. Employees are required to pay just financial obligations in a proper and timely manner, especially one imposed by law such as State, Federal, or local taxes.

g. Reporting for Duty While Under the Influence of Intoxicants. An employee suspected of reporting for duty under the influence of intoxicants will be taken by a supervisor to the Branch Clinic, Building 65, for medical evaluation by a medical officer whenever this is practicable. Items 1 through 12 of Competence for Duty Examination Form, NAVMED 6120/1 (available through Self-Service), will be completed by the division head or a designated representative and submitted to the examining physician for the requested examination. Upon completion of the examination, NAVMED 6120/1 and the employee will be released to the official who requested the examination. If it is determined that the employee is under the influence of intoxicants, the employee will be placed on sick leave for the remainder of the day and appropriate action will be taken in accordance with this Order.

h. Refusal to Perform Properly Assigned Duties. Employees who refuse to perform properly assigned duties in effect place themselves in a nonduty, nonpay status. Such nonduty, nonpay status will not extend beyond the workday (shift) during which the refusal occurs, and the employee will be instructed to return to duty no later than the beginning of the next scheduled workday (shift). In such a case, action taken to relieve an employee from duty is nothing more than administrative recognition of the employee's own actions and does not constitute a suspension from duty. Additionally, an employee who refuses to perform properly assigned duties is subject to appropriate disciplinary action.

1 SEP 2000

15. Miscellaneous Problems. Questions and problems that may arise in applying the provisions of this Order should be referred to the MCCS Human Resources Division, extension 451-2047.

16. Action. NAFTI heads will ensure that all subordinate managers and supervisors (military and civilian) are thoroughly familiar with the contents of this Order and that the Order is made available to employees upon request.



A. J. KARLE JR.
Chief of Staff

DISTRIBUTION: N plus MCCS(30)/BH(4)

1 SEP 2005

GUIDANCE IN EFFECTING DISCIPLINARY ACTIONS

1. Purpose. The purpose of this enclosure is to provide advice and guidance to supervisors and managers effecting disciplinary actions. While none of this advice and guidance is mandatory, it constitutes the minimally acceptable procedure and should be followed under normal disciplinary situations.

2. DoN Philosophy of Discipline. Discipline is a managerial tool intended to correct deficiencies in employee behavior and attitude, correct situations which interfere with efficient operations, maintain high standards of government service and maintain public confidence in the Department of the Navy. It is not philosophy of DoN to utilize disciplinary measures for the sole purpose of punishing employees. An employee whose behavior is not acceptable to management, but whose behavior is not corrected, is quite likely to persist in the unacceptable behavior in the erroneous belief that it is correct, or at least condoned. Supervisors and managers have an obligation to such an employee to correct behavioral deficiencies while they are still minor and before the behavior becomes habit and a bad example to others. It is easier to correct a first instance of deficient behavior than to ignore the situation and later try to correct the third, fourth, or fifth instance. It is easier and better management to correct a minor case of deficient behavior than to ignore the situation and allow the problem to become a major one.

3. Guidance in Selecting a Proper Course of Disciplinary Action

a. Choose the Minimum Disciplinary Action Likely to Correct the Improper Behavior. Most people would not use an elephant gun in hunting rabbits, and this analogy holds true in choosing disciplinary actions. For example, it would be foolish to attempt to correct an employee's first instance of tardiness by imposing a one-day suspension. Such an action could create a significant amount of resentment in the employee and do more damage than good. Determining the minimum action likely to correct the problem is extremely important and a responsibility which frequently lies with the first line supervisor.

b. Disciplinary Actions Must be Fair and Just. This is another way of saying that there must be similar actions for similar

ENCLOSURE (1)

1 SEP 2000

offenses. This does not mean that all similar actions must bear identical remedies; there are other factors such as mitigating circumstances which should be considered. It is important that managers have good reasons for imposing significantly different remedies for similar offenses. A good place to start in determining a proper remedy is to look at enclosure (3) to this Order. While this Guide of Disciplinary Action is not mandatory, most actions in the DoN fall within its limits and there should be good reasons for deviation from the guide when it occurs.

c. Disciplinary Actions Should be Timely. Being timely does not mean that disciplinary action should be taken in haste. Disciplinary action should not be taken precipitately because important facts might be ignored. However, the corrective influence of a suspension, for example, is greatly diminished if it follows the offense by six months or a year.

d. Mitigating, Unusual, or Aggravating Circumstances Should be Considered in Determining a Proper Disciplinary Action. Before deciding on a penalty the deciding official should consider the employee's position, length of service, and prior disciplinary record. If at all possible, obtain the employee's version of the events before initiating a disciplinary action. It may be that the employee will have an acceptable explanation or be able to present mitigating circumstances.

e. Consider the Employee as a Unique Individual. What is the employee's attitude? Does the employee fully understand the nature of the offense and why the manager is troubled? Is the offense part of a continuing behavioral pattern or does it represent an isolated action? Has the employee been led to believe that the behavior in question is appropriate?

4. Alternate Courses of Action. While it is a generally bad idea to ignore instance of employee misconduct, all misconduct does not warrant formal disciplinary action. There are other forms of correction available.

a. Explanation or Training. If the employee is unaware of the proper performance or conduct, it may be that training, or perhaps a sound explanation, will be sufficient to correct the problem. This alternative is particularly likely to be appropriate when the employee is new or working in an unfamiliar environment.

ENCLOSURE (1)

1 SEP 2000

b. Employee Assistance Program. As a general rule, it is in the best interest of both DoN and the employee to rehabilitate rather than remove. Misconduct is not always willful. Sometimes it stems from alcoholism, misuse of drugs or other personal problems which may be helped through the Employee Assistance Program (EAP). A manager should seek to learn enough to make a determination whether to refer an employee to an EAP counselor, take disciplinary action, or do both concurrently.

c. Performance Ratings. Most employees are aware of the importance of performance ratings and want to obtain good ones. Sometimes a discussion about performance and/or a low performance rating will have a positive effect in improving employee behavior. If an employee's performance rating becomes so bad as to be unacceptable, that employee may be demoted or removed.

d. Withholding Within-Grade Increases. If a Crafts and Trades employee's behavior is bad enough to adversely affect performance, it may be appropriate to place that employee under a letter of caution and withhold his/her within-grade-increase. The concept behind withholding a step increase is that the employee has not met an acceptable level of competence, does not deserve to get a pay increase, but wants a pay increase and will modify behavior/performance in order to obtain the step increase. Withholding a step increase through a letter of caution is not a disciplinary action.

e. Fitness for Duty Examination. Sometimes misconduct is the result of illness. In such instances, curing the illness, the reassignment to a position which the employee can physically handle, or retiring the employee on disability is preferable to effecting disciplinary action. One way that management has of determining whether or not illness is the cause of misconduct is to send the employee to the Branch Clinic, Building 65, for a fitness-for-duty examination.

f. Voluntary Action by Employee. An employee who is confronted by management with a potential disciplinary situation will sometimes volunteer to accept a lower grade or resign in lieu of disciplinary action. This is appropriate, provided management has not coerced the employee into taking such an action. Coercion is a tricky concept. It is permissible to tell an employee that a removal action is contemplated and that if the employee resigns before an action is proposed, no record will be made in the Official Personnel Folder.

ENCLOSURE (1)

1 SEP 2000

It is not permissible to say that the employee must resign or a removal will be proposed. The latter example is coercion.

g. Oral Admonishment. An oral admonishment or warning is an informal action and usually constitutes the first step in correcting employee misconduct. As a rule, it is taken by the immediate supervisor for minor violations of a rule or regulation, or to call the employee's attention to certain deficiencies in conduct. Incidents for which an employee is orally admonished will not be counted as prior offenses or infractions when determining a remedy under the Guide for Disciplinary Action. They may be used in subsequent actions, however, to show that certain aspects of conduct have been brought to an employee's attention. The supervisor should retain personal notes of any oral admonishment for a period of one year. An oral admonishment will not be made a matter of record in the Official Personnel Folder. Oral admonishments may not be grieved or appealed.

h. Letter of Admonishment. A letter of admonishment is a nondisciplinary, written correction of an employee's improper conduct. It may be issued to an individual employee or to a group of employees by an immediate supervisor or by a higher level management official. It advises the recipient(s) of the acceptable standards of conduct and provides notification that conduct is failing to meet those standards. Letters of Admonishment will not be counted as disciplinary actions when determining the remedy for a subsequent infraction under the Guide for Disciplinary Action. Such incidents may, however, be included in the specifications of such infractions when it is appropriate to describe a pattern of conduct. Such letters will not be filed in the employee's Official Personnel Folder, but will be retained by the supervisor for a period not to exceed one year. They will be automatically canceled one year from date of issuance. Letters of admonishment are not grievable. They will be prepared by the MCCS Human Resources Division for conformance with prescribed procedures for issuance to the employee.

i. Letter of Requirement. A Letter of Requirement is a nondisciplinary, written notice which levies an employment-related requirement upon the recipient. It may be issued to an individual employee or to a group of employees, by an immediate supervisor or by a higher level management official. A Letter of Requirement may levy a requirement on an employee which is over and above that expected of

ENCLOSURE (1)

1 SEP 2000

other employees, e.g., one which requires a doctor's certificate to support future requests for sick leave or one which subjects an employee to certain controls not imposed on other employees. Incidents which form the basis for the issuance of letters of requirement will not be counted as prior offenses when determining the remedy for a subsequent infraction under the Guide for Disciplinary Action. Such letters will not be filed in the employee's Official Personnel Folder but may be retained by the supervisor for a period not to exceed one year. They will be automatically cancelled one year from date of issuance. Letters of Requirement may be used during their retention period to show that a particular matter has been officially noted and brought to the employee's attention. A Letter of Requirement requiring substantiation of all sick leave requests will not be issued unless the employee has been counseled on at least one occasion regarding use of sick leave. Letters of Requirement are grievable. Letters of Requirement will be prepared by the MCCS Human Resources Division for conformance with prescribed procedures for issuance to the employee.

5. Disciplinary Actions

a. Letter of Reprimand. A Letter of Reprimand is appropriate when a breach of the employee-employer relationship is of such nature as to warrant the temporary inclusion of a record in the employee's Official Personnel Folder. It constitutes a fair warning that the employee has failed or is failing to meet the prescribed standards of behavior of the organization. A Letter of Reprimand is the first in a possible series of formal disciplinary actions, each more progressive in nature, if the reprimand does not serve its purpose. In certain types of offenses, when a suspension may not be the correct remedy, a series of reprimands, progressively more severe in tone, should carry the same weight as suspensions in justifying a subsequent termination action. Letters of Reprimand will be prepared by the MCCS Human Resources Division for conformance with prescribed procedures for issuance to the employee.

b. Suspension of 30 Calendar Days or Less. A suspension is a formal disciplinary action that may be the final warning step in the progressive disciplinary process before termination action. It is a placing of an employee in one or more days of nonduty status without pay. A suspension is appropriate where other informal and/or formal actions have failed to correct unacceptable conduct. It is also appropriate for first infractions in connection with serious breaches

ENCLOSURE (1)

1 SEP 2000

of conduct. A suspension, however, is normally not an appropriate remedy for indebtedness or unacceptable performance situations. Most suspensions fall within a one to five day period. Rarely should a suspension in excess of 10 days be appropriate. The financial impact upon the employee should be carefully considered in decisions to suspend, and the number of days set at a point within the recommended range which will serve to be corrective rather than punitive. Letters of Suspension will be prepared by the MCCS Human Resources Division for conformance with prescribed procedures for issuance to the employee.

c. Suspension for More than 30 Calendar Days. A suspension of more than 30 calendar days should not, generally, be imposed. Some circumstances that justify such remedies are:

(1) When required by law;

(2) When the particular circumstances of a case justify, e.g., an indefinite suspension pending an investigation or disposition of a criminal action; or

(3) In conjunction with a removal action where circumstances preclude retaining the employee in a duty status.

d. Involuntary Demotion/Downgrade. A demotion is not normally an appropriate action since it is usually related to matters of performance. However, in situations of misconduct, which appear to warrant removal or demotion to a position of lesser responsibility and authority, removal may be appropriate and serve as a more moderate remedy. An employee's previous employment record and the prospect for satisfactory performance in another position should be primary considerations in making this determination.

e. Involuntary Termination/Removal. Termination action should be taken only after less severe measures have failed to correct the offending employees, or when the first offense is of such a serious nature that termination action is clearly warranted. A termination action may be based on actions occurring before appointment, e.g., falsification of an application. Depending on the severity of previous offense(s), removal action may be instituted against an employee for a total of two or more offenses listed in enclosure (2), committed in any 24-month period. Termination action will be

ENCLOSURE (1)

1 SEP 2000

initiated only after it has been clearly demonstrated that the employee does not conform to the accepted rules of conduct, and where such action will promote the efficiency of the Nonappropriated Fund Instrumentality. When considering termination action against an employee, management officials will not request that the employee resign or retire to keep from being disciplined. A resignation or retirement obtained under such circumstances may later be challenged as being under duress and thus found to be an involuntary action subject to disciplinary action procedures.

6. Special Disciplinary Situations

a. Indebtedness. NAFI's expect their employees to pay their just debts. When an employee's failure to honor a valid debt places an administrative burden on the NAFI, disciplinary action may be taken. However, suspension is not normally an action used for indebtedness since a suspension would further reduce an employee's ability to pay the debt. It is generally better to issue several letters of reprimand of increasing severity and, if the letters are ineffective, then propose a termination action.

b. Leave Abuse. Leave Without Pay (LWOP) is an approved absence. Do not attempt to impose disciplinary action based on instances of LWOP. If an employee is absent without permission, carry that employee as Absent Without Leave (AWOL). A charge of AWOL will support a disciplinary action. However, an instance of AWOL does not demand disciplinary action. An employee who is AWOL is not paid for the period of unapproved absence. AWOL is charged for the exact amount of time the employee is absent.

ENCLOSURE (1)

1 SEP 2000

GUIDELINES FOR SELECTING APPROPRIATE PENALTY IN DISCIPLINARY ACTIONS

1. Purpose. The range of penalties in the Guide for Disciplinary Action, enclosure (3), is provided to give supervisors and managers flexibility in dealing with particular situations, while guiding them toward a measure of uniformity in imposing penalties consistent with differences in the nature of the position held.

2. Application

a. Use of the Guide in Presenting Charges. When presenting charges to the employee, a blanket statement from the Guide should not be used. Use only the parts that describe the employee's actual conduct and leave out the parts that do not apply. It is not necessary that the offense be described in terms from the Guide. It should be possible to state the reason in terms of regulations or rules of general conduct which have been violated or damage to or interference with NAFI operations resulting from the employee's action. The factor of willful negligence should be avoided since willfulness is difficult to establish. Generally, the question of willfulness may be discarded if the fact of negligence or dereliction on the part of the employee is established.

b. Combination of Offenses. The Guide provides for disciplinary action in the case of a combination of any of the offenses listed. However, the preferring of more than one charge for a single offense (example, "sleeping" and "loafing") is prohibited. In such cases the more appropriate offense should be used and the proper penalty assessed. When the infraction covers a combination of two or more normally unrelated offenses (example, "tardiness" and "insubordination"), charges covering each offense should be considered, and a heavier penalty than that prescribed for any one such offense may be assessed.

c. Letter of Reprimand. The Guide provides for a Letter of Reprimand as a minimum penalty for many of the offenses listed. Reprimands may be considered in determining disciplinary action taken at later dates. The Letter of Reprimand should not be confused with a Letter of Caution which is not a disciplinary action. The Letter of Reprimand must be filed in the Official Personnel Folder (OPF)

ENCLOSURE (2)

1 SEP 2000

and retained for a period of two years (at the end of which it will be removed from the OPF and destroyed).

d. Suspensions. The Guide provides for suspensions of varying lengths of time for most offenses. Suspension penalties are applicable to calendar days. Periods of suspension will be in a nonpay status.

e. Considering the Past Record. The Guide provides that penalties for disciplinary action offenses will, in general, fall within the ranges indicated. However, in unusual cases, depending upon the gravity of the offense and the past record of the employee, a penalty, either more or less severe than the range provided for in the Guide, may be imposed. If an employee's record of past disciplinary offenses is considered in assessing the penalty for a current offense, the employee must be so advised of this fact in the advance notice of proposed disciplinary action. Not more than two years of any employee's past disciplinary record will be considered in such connection. Depending on the severity of the offenses, termination action may be instituted against an employee for two or more offenses in a two year period.

ENCLOSURE (2)

1 SEP 2000

GUIDE FOR DISCIPLINARY ACTION

<u>NATURE OF OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
1. Violation of security regulations.	Reprimand to removal.	1 day suspension to removal.	5 days suspension to removal.
2. Violation of Safety Practices and Regulations (including but not limited to endangering the safety of, or causing injury to, persons through carelessness).	Reprimand to removal.	2 days suspension to removal.	15 days suspension to removal.
3. Discrimination	Reprimand to removal.	Removal.	
4. Sexual Harassment	Reprimand to removal.	5 days suspension to removal.	10 days suspension to removal.
5. Insubordination, including but not limited to:	Reprimand to removal.	5 days suspension to removal.	15 days suspension to removal.
a. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from immediate supervisor having responsibility for the work of the employee; or			
b. Disrespectful conduct toward constituted authorities; or use of insulting, abusive or obscene language to constituted authorities; or physical			

ENCLOSURE (3)

1 SEP 2000

<u>NATURE OF OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
resistance to consti- tuted authorities.			
c. Failure or undue delay in carrying out orders, work assignments, or in- structions of supervisors.			
6. Loafing or wasting time; sleeping during working hours.	Reprimand to 2 days suspension.	3 days sus- pension to removal.	10 days sus- pension to removal.
7. Immoral, indecent or notoriously disgrace- ful conduct.	5 days sus- pension to removal.	30 days sus- pension to removal.	Removal.
8. Disorderly conduct; i.e., rude, boisterous play which adversely affects production, discipline or morale, or which endangers the safety of persons or property; or use of insulting, abusive or obscene language to, or about, other per- sonnel, or quarreling or inciting to quarrel; or fighting, threat- ening, or attempting to inflict or inflict- ing bodily harm to another; or use of violent language which adversely affects production, discipline or morale.	Reprimand to removal.	15 days sus- pension to removal.	Removal.
9. Solicitation of gam- bling on Government owned/leased premises.	Reprimand to removal.	10 days sus- pension to removal.	Removal.

ENCLOSURE (3)

1 SEP 2000

<u>NATURE OF OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
10. Misconduct off duty which reflects unfavorable on the NAFI.	Reprimand to removal.	3 days suspension to removal.	5 days suspension to removal.
11. Illegal or improper introduction, possession or use of drugs, narcotics, or intoxicants, within any place under jurisdiction of the Federal Government, or reporting to work while under the influence of or impaired by, any of the above substances.	Reprimand to removal.	10 days suspension to removal.	Removal.
12. Actual or attempted taking and carrying away Government or NAFI property or funds, or the property or funds of others.	Reprimand to removal.	Removal.	
13. Knowingly making false, unfounded or malicious statements about NAFI personnel or other personnel attached to activity.	1 to 15 days suspension.	15 days suspension to removal.	Removal.
14. Unexcused tardiness (after record of excessive tardiness has been established).	Reprimand to 2 days suspension.	3 to 15 days suspension.	15 days suspension to removal.
15. Loss of, or damage to, Government property, funds, or the property or funds of NAFI employees, or endangering any of the above through carelessness.	Reprimand to removal.	10 days suspension to removal.	Removal.

ENCLOSURE (3)

BO 12750.3B
1 SEP 2000

<u>NATURE OF OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
16. Failure to report to proper authority personal knowledge of serious offenses on the job on the part of another employee.	Reprimand to removal.	3 days suspension to removal.	15 days suspension to removal.
17. Falsification, misstatement, exaggeration or concealment of material fact in connection with employment, promotion, any record, investigation, or other proper proceeding.	Reprimand to removal.	5 days suspension to removal.	15 days suspension to removal.
18. Gross negligence.	Reprimand to removal.	30 days suspension to removal.	Removal.
19. Unauthorized disclosure of confidential or private information.	Reprimand to removal.	10 days suspension to removal.	Removal.
20. Abuse of NAFI privileges.	Reprimand to removal.	30 days suspension to removal.	Removal.
21. Unauthorized absence.	Reprimand to 5 days suspension.	5 to 10 days suspension to removal.	10 days suspension to removal.
22. Leaving job to which assigned at anytime during working hours without proper permission.	Reprimand to 5 days suspension.	5 to 10 days suspension to removal.	10 days suspension to removal.

ENCLOSURE (3)

FORMAT OF INVESTIGATION

From: (Name, Title)

To:

Subj: (Same as subject of appointing order)

Ref: (a)

(b)

(c)

(d)

Encl: (1) Summary of (or verbatim) sworn (or unsworn) testimony
of _____ (a witness)

(2) Summary of (or verbatim) sworn (or unsworn) testimony
of _____ (a witness)

(3) Statement of _____, signed by
witness

(4) Description of _____ (evidence)

(5) Photograph of _____ depicting _____

Note: The testimony on statements of each witness should be a separate enclosure to the investigation. Statements or testimony of witnesses will be listed as enclosures first, before enclosures that contain photographs, documents, etc.

PRELIMINARY STATEMENT

1. Paragraph 1 of the investigative report shall contain information in the form of a "preliminary statement." Its length may make it necessary to continue on into one or more additional paragraphs. After setting forth the nature of the investigation, set forth the difficulties encountered in the investigation, if any; limited participation in the investigation by a member; or any other information necessary for a complete understanding of the case. A report of the investigating official is not necessary. Notwithstanding that it may be set forth in the preliminary statement, the findings of fact shall include all essential facts developed by the investigation.

FINDINGS OF FACT

1. _____
2. _____
3. _____

Note: The findings of fact constitute the investigating official's description of the details of the events as derived from evaluation of

ENCLOSURE (4)

the evidence. The findings must be as specific as possible as to time, places, persons, and events. Each fact may be made a separate finding; or facts may be grouped into a narrative. It is for the investigating official to determine the most effective presentation for a particular case. Each fact set forth must be supported by either the testimony of a witness, or statement of the investigating official for documentary or real evidence appended to the investigative report as an enclosure.

OPINIONS

1. _____
2. _____
3. _____

Note: An opinion is a logical conclusion based on the findings of fact and must be supported by the findings of fact. Determination of responsibility and misconduct should be stated as an opinion.

RECOMMENDATIONS

1. _____
2. _____
3. _____

Note: The investigating official's recommendations should not include any specific disciplinary action.

(Signature of investigating official)

ENCLOSURE (4)